

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARJORIE L. LAWSON and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Tuskagee, Ala.

*Docket No. 96-550; Submitted on the Record;
Issued March 26, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs properly determined that an overpayment of compensation in the amount of \$1,013.44 occurred; (2) whether the Office properly determined that \$30.00 should be withheld from appellant's continuing compensation checks to recover the overpayment; and (3) whether the Office's refusal to waive imposition of interest on the overpayment debt constituted an abuse of discretion.

The Office accepted appellant's claim for contusion of the right knee, ankle, arms, fracture of the right ankle and post-traumatic stress disorder. Appellant began receiving compensation benefits.

In a preliminary determination dated February 27, 1995, the Office found that appellant received an overpayment of \$1,013.44 because appellant's health insurance was reinstated on January 10, 1993 and the Office failed to make deductions until February 5, 1995. Therefore, the period of the overpayment was from January 10, 1993 through February 4, 1995. The Office found that appellant was without fault in the matter of the overpayment. The Office informed appellant that she should provide information regarding her income and expenses to determine whether it would be against equity and good conscience or defeat the purpose of the Federal Employees' Compensation Act to recover the overpayment.

By letter dated March 2, 1995, appellant requested waiver of the overpayment and submitted financial information about her earnings. The Office held a telephone conference with appellant on September 15, 1995, regarding whether the overpayment should be waived and the method of repayment if waiver is not granted. The Office determined that appellant's income per month was \$2,807.00 which included her compensation and social security benefits and that her expenses per month were \$2,191.00. The Office recorded the conversation in a memorandum dated September 22, 1995 and by letter of that date informed appellant she had 15 days to address any inaccuracies in the memorandum. In an undated memorandum recording a

phone call with appellant, the Office noted that appellant's mortgage was \$716.00, not \$650.00 and adjusted for the proper figure in its calculation.

By decision dated November 22, 1995, the Office affirmed its preliminary determination that appellant received an overpayment of \$1,013.44 and that appellant was without fault in the matter of the overpayment. The Office found that appellant was not entitled to waiver of the overpayment. The Office also found that interest charges on the overpayment could not be waived.

The Board finds that appellant received an overpayment of \$1,013.44.

The Office found in its February 27, 1995 preliminary determination that appellant received an overpayment of \$1,013.44 because the Office failed to deduct health insurance benefits from January 10, 1993 through February 4, 1995. The Office supported this determination with documentation, Form CA-25. Appellant does not refute this fact of overpayment and there is no evidence to the contrary.

The Office properly found that appellant was without fault in creation of the overpayment.

Section 8129(b) of the Act¹ provides that an overpayment of compensation shall be recovered by the Office unless incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of the Act or be against equity and good conscience.²

In the February 27, 1995 preliminary determination, the Office determined that appellant was without fault in the creation of the overpayment because she was unaware that the Office had failed to make the appropriate deductions. Therefore, the issue is whether appellant is entitled to waiver of the overpayment.

Section 10.322³ provides that recovery of an overpayment will defeat the purpose of the Act if recovery would cause hardship by depriving a beneficiary of income and resources needed for ordinary and necessary living expenses when the individual from whom recovery is sought needs substantially all of his or her current income (including compensation benefits) to meet his current ordinary and necessary living expenses, and the individual's assets do not exceed the resource base of \$3,000.00 for an individual or \$5,000.00 for an individual with a spouse or one dependent plus \$600.00 for each additional dependent. For waiver under the "defeat the purpose of the Act" standard, appellant must show both that he needs substantially all of his current

¹ 5 U.S.C. § 8129(b).

² *Philip G. Arcadipane*, 48 ECAB ____ (Docket No. 95-1024, issued June 6, 1997); *Michael H. Wacks*, 45 ECAB 791, 795 (1994).

³ 20 C.F.R. § 10.322.

income to meet current ordinary and necessary living expenses and that his assets do not exceed the resource base of \$3,000.00.⁴

In the instant case, in the memorandum of the telephone conference dated September 22, 1995, the Office determined that appellant had income of \$2,807.00 and expenses of \$2,191.00. Therefore, appellant's income exceeded her expenses by \$616.00. An individual is deemed to need substantially all of his or her current income to meet ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00.⁵ Although the Office did not specifically address whether appellant's income exceeded her expenses, its finding that appellant is not entitled to waiver of the overpayment is supported by its findings as to appellant's income and expenses which established that appellant's income exceeded her expenses by \$616.00. The amount of \$616.00 exceeds the \$50.00 minimum and therefore appellant does not require substantially all of her current income to meet ordinary and necessary living expenses. Appellant did not make any argument that she was entitled to waiver on the grounds of equity and good conscience. The Office therefore did not abuse its discretion in denying appellant's request for waiver of recovery of the overpayment.

Section 10.321(a) provides if an overpayment of compensation has been made to one entitled to future payments, proper adjustments shall be made by decreasing subsequent payments of compensation, "having due regard to the probable extent of future payments, the rate of compensation, the financial circumstances of the individual, and any other relevant factors, so as to minimize any resulting hardship upon such individual."

In the September 22, 1995 telephone memorandum, the Office determined appellant had no assets and as noted, appellant's income exceeded her expenses by \$616.00. The Board therefore finds that the Office's repayment schedule of \$30.00 a month from December 9, 1995 to August 31, 1998 was not unreasonable under the circumstances.⁶

The Board further finds that the Office's refusal to waive imposition of interest on the overpayment debt did not constitute an abuse of discretion.

The Office's procedures concerning waiver of interest and other charges provide, in relevant part, that waiver of interest and other charges is mandatory,

"[w]here the debtor is without fault in the creation of the debt and a repayment agreement has been established, if the monthly payment is so small that it does not cover the interest, or there is so little left after interest that the debt will not be paid off within the lifetime of the debtor as determined by the actuarial tables,

⁴ See *Jesse T. Adams*, 44 ECAB 256, 260 (1992).

⁵ *Linda D. Lane*, 46 ECAB 727, 732 (1995).

⁶ See *Forrest E. Brown, II*, 44 ECAB 278, 286 (1992).

then charges are waived. Waiver of charges under this provision is determined by completing the Waiver of Charges Worksheet....”⁷ (Emphasis omitted.)

As part of its November 22, 1995 decision, the Office completed a waiver of charges work sheet dated November 22, 1995. The Office found that the period necessary to repay the debt with charges was 33.47 months which was less than appellant’s life expectancy of 235.20 months.⁸ The Office further found that appellant was not eligible for a compromise of the interest charges as the application of interest charges would not increase the period of indebtedness by more than 35 percent. The Office therefore properly found that appellant did not qualify for a waiver of interest charges.

Accordingly, the decision of the Office of Workers’ Compensation Programs dated November 22, 1995 is hereby affirmed.

Dated, Washington, D.C.
March 26, 1998

Michael J. Walsh
Chairman

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

⁷ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Debt Liquidation*, Chapter 6.300.4 (September 1994); see *Linda D. Lane*, *supra* note 5.

⁸ Appellant was 61 years old at the time.